McKENNA and CLARKE, however, dissenting. *Caminetti, et al.* v. *United States,* 37 Sup. Ct. 192.

Speaking of the interpretation of written law BLACKSTONE says, "As to the *effects* and *consequence,* the rule is, that where words bear either none, or a very absurd signification, if literally understood, we must a little deviate from the received sense of them. Therefore the Bolognian law, mentioned by PUFFENDORF, which enacted 'that whoever drew blood in the streets should be punished with the utmost severity,' was held after long debate not to extend to the surgeon, who opened the vein of a person that fell down in the street with a fit." 1 BLACK. COMM. *60. "The same common sense accepts the ruling, cited by PLOWDEN, that the statute of First Edward II, which enacts that a prisoner who breaks prison shall be guilty of felony, does not extend to a prisoner who breaks out when the prison is on fire; 'for he is not to be hanged because he would not stay to be burnt.' And we think that a like common sense will sanction the ruling we make, that the Act of Congress which punishes the obstruction or retarding of the passage of the mail, or of its carrier, does not apply to a case of temporary detention of the mail caused by the arrest of the carrier upon an indictment for murder." *United States* v. *Kirby,* 7 Wall. 482, 486. And in *Church of The Holy Trinity* v. *United States,* 143 U. S. 457, it was held that the importation by the accused of an alien under contract to serve as rector of a church was not punishable under a statute making it an offense to import aliens "under contract or agreement to perform labor in the United States," it being conceded that the act upon which the prosecution was based was clearly included within the language of the statute. The dissenting Justices in the principal case, being of opinion both from external and internal evidences that the legislative purpose was to cover only commercialized vice, sought to apply the principle of these holdings. The complete blamelessness of the physician, of the officer making the arrest of the mail carrier, and of the church, in the instances referred to would seem to make out a situation differing vitally from that of the defendant who has transported a woman in interstate commerce for the purpose of fornication or adultery.

To the argument that under the interpretation of the ACT adopted by the Supreme Court opportunities for blackmail may be vastly increased, it may perhaps be suggested that even so the wholly innocent traveller has nothing to fear. If a man in his peregrinations chooses to provide himself with female society to while away the tedious hours of travel it is not entirely unreasonable to expect him to assume such risks, even granting that relations between him and his companion may never actually have passed beyond the purely platonic. R. W. A.

THE LIABILITY OF THE INITIAL CARRIER AFTER THE FINAL CARRIER BECOMES A WAREHOUSEMAN.—In England and a few of the United States the rule of *Muschamp* v. *Lancaster, etc., Ry. Co.,* 8 Mees. & W. 421, is followed, and a carrier which receives goods for transportation to a point beyond its terminus presumably assumes liability for through transportation. In most

of the States a carrier may assume liability beyond its own line by making a "through contract," but unless it does so the carrier receiving goods destined for a point not on its line is liable only for safe carriage over its own part of the route and for delivery to the succeeding carrier. As regards interstate transportation, Congress doubtless assumed complete control over the matter by the CARMACK AMENDMENT of 1906 (34 Stat. at L. 584, Ch. 3591) and provided therein that the initial carrier should be liable for "any loss, damage or injury to such property caused by it" or any connecting carrier. One of the results of the act referred to, as construed by the United States Supreme Court in *Adams Express Co.* v. *Croninger,* 226 U. S. 491, and other cases, was to make contracts limiting the carrier's liability valid, regardless of State rules to the contrary; and the courts of States whose laws had been more advantageous to the shipper were loath to extend its operation any further than they were obliged to by the decisions of the United States Supreme Court. See 15 MICH L. REV. 314. In like manner, the courts of States whose laws were more advantageous to the initial carrier have been reluctant to extend the effect of the provision rendering such carrier liable for acts of the connecting carrier further than the words of the act and the decisions of the Supreme Court of the United States have necessitated. The decisions of many of the State courts show a marked tendency to exclude from the operation of the CARMACK AMENDMENT all matters not expressly provided for in it; while the federal courts, on the other hand, have been inclined to make the amendment as a whole all-inclusive, and to extend its application broadly and freely. For example, some State courts, even after the *Croninger* case, held that limitations of of liability for *delay* were not within the scope of the CARMACK AMENDMENT and were governed by State rules, and, similarly, that the initial carrier was not by that amendment made liable for delay caused by a connecting carrier. *Gulf, C. & S. F. Ry. Co.* v. *Nelson,* (Tex. Civ. App. 1911), 139 S. W. 81. But the United States Supreme Court decided that delay in interstate transportation was covered by the amendment. *N. Y. & Norfolk R. R.* v. *Peninsula Exchange,* 240 U. S. 34, 36 Sup. Ct. 230. So, as some of the State courts sought to restrict the effect of the amendment by holding that a contract limiting the carrier's liability became amenable to State rules when the final carrier ceased to act as carrier and became a warehouseman, it has been held that the liability imposed by the amendment upon the initial carrier is terminated as soon as the carrier relation ceases. In *Norfolk & W. R. Co.* v. *Stuart's Draft Co.,* 109 Va. 184, the Virginia court declared that "the vicarious liability sought to be fastened upon the defendant [the initial carrier] is for the acts of the connecting carrier as carrier and not as warehouseman." And other courts have referred to this case with approval. *Louisville & N. R. Co.* v. *Brewer,* 183 Ala. 172, 62 So. 698; *Hogan Milling Co.* v. *Union Pacific R. Co.,* 91 Kans. 783. And in a very recent case the New York Supreme Court, citing the *Stuart's Draft* case and others, based its decision in part upon the proposition that "the initial carrier is not liable for any breach of duty on the part of the final carrier as warehouseman." *Dodge & Dent Mfg. Co.* v. *Pennsylvania R. R. Co.,* 162 N. Y. Supp. 549.

In the first cases that came before it involving the CARMACK AMENDMENT, the United States Supreme Court said that the provision of that amendment making the initial carrier liable for defaults of connecting carriers operated to make such connecting carriers the agents of the initial carrier, and intimated that its effect was to apply to all interstate shipments over several lines the English rule as to through contracts. In *Atlantic Coast Line* v. *Riverside Mills,* 219 U. S. 186, the court said: "In substance Congress has said to such carriers: 'If you receive articles for transportation from a point in one State to a place in another, you must do so under a contract to transport to the place designated'." And in *Galveston, H. & S. A. Ry. Co.* v. *Wallace,* 223 U. S. 481, it was said that "under the CARMACK AMENDMENT, wherever the carrier voluntarily accepts goods for shipment to a point on another line in another State, it is conclusively treated as having made a through contract." And the same conclusion was reached by the Alabama court in *Louisville & N. R. Co.* v. *Brewer,* supra, in which the court, referring to the CARMACK AMENDMENT and the English rule, said that "the true effect of said amendment is to bring all interstate shipments, the stipulations of bills of lading to the contrary notwithstanding, under the operation of the rule." Had the effect of the amendment been no more than to bring all interstate transportation under the operation of the English rule as to through contracts, it might well have been decided that the initial carrier was absolved from all further liability as soon as the final carrier ceased to be a carrier with reference to a particular shipment. It had been held in Illinois, which is one of the states where the English rule prevails, that even under that rule the initial carrier was not liable for a mis-delivery by the connecting carrier after the latter had ceased to be a carrier and had become a warehouseman. *Illinois Central R. Co.* v. *Carter,* 165 Ill. 570, 46 N. E. 374, 36 L. R. A. 527. The liability in England was apparently not so restricted. *Crouch* v. *Great Western Ry Co.,* 6 W. R. 391. But Congress went further, and defined "transportation" to include "all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage and handling of the property transported;" and it seems, from this definition and the broad language of the act, that Congress intended by the CARMACK AMENDMENT to make the initial carrier liable for any loss, damage, or injury until the interstate shipment is completed, and that goods shipped are still in interstate commerce, even though the final carrier has become a warehouseman. So it was held, with reference to the termination of contracts limiting liability, by the Supreme Court of the United States. *Cleveland, C. C. & St. L. Ry. Co.* v. *Dettlebach,* 239 U. S. 588; *Southern R. Co.* v. *Prescott,* 240 U. S. 632; *Western Transit Co.* v. *Leslie Co.* (1917) 37 Sup. Ct. 133. And the Kentucky court, in *Nashville, C. & St. L. Ry. Co.* v. *Dreyfuss-Weil Co.,* 150 Ky. 333, 150 S. W. 321, reached the same conclusion with regard to the termination of the liability of the initial carrier. It would seem that if the provisions of the original contract are still in force as against the shipper after the carrier relation has ended, they ought also to continue to be binding on the initial carrier.

It must be concluded, therefore, that the proposition advanced in *Dodge & Dent Mfg. Co.* v. *Pennsylvania R. R. Co.*, supra, viz. that the responsibility of the initial carrier is at an end when the final carrier becomes a warehouseman, cannot be supported as to interstate shipments. And this conclusion is strengthened by an examination of the authorities cited in support of it. In *Wien* v. *New York Central & H. R. R. Co.*, 166 App. Div. 766, the New York court held that the initial carrier was not liable for loss incurred by the shipper as the result of the connecting carrier's mistake and failure to return the shipment promptly after the consignee had refused to accept the goods and the consignor had ordered their return. The decision was put on the ground that the later negotiations between the consignor and the final carrier amounted to a new contract, and that the CARMACK AMENDMENT entitled the shipper to recover from the initial carrier for defaults only in the performance of the original contract, regarded as a through contract. Whether or not this decision was correct, it is not authority for the proposition advanced in the principal case, since the question there involved is not whether the initial carrier is liable for a default by the connecting carrier in the performance of a new contract made by it, but whether the original contract was still subsisting. Nor is the decision in the *Stuart's Draft* case, supra, and the other cases mentioned above as approving it, authority for the broad doctrine that the initial carrier is relieved of all further responsibility as soon as the final carrier becomes a warehouseman. However positive the dicta in those cases may be, the decisions themselves involved the question, not whether the initial carrier was liable *at all* after the final carrier had ceased to act as such, but whether it was liable thereafter *as a carrier;* in other words, what those cases decided was that the CARMACK AMENDMENT did not impose carrier liability on the initial carrier for a loss or injury to goods occurring while they were held by the succeeding carrier as a warehouseman. It has often been held that under that amendment the initial carrier may make any defense which might be made by the connecting carrier in whose hands the injury occurred. *Riverside Mills* v. *Atlantic Coast Line*, 168 Fed. 987; *Brinson & Kramer* v. *Norfolk Southern R. Co.*, 169 N. C. 425, 86 S. E. 371; *Burke* v. *Gulf, C. & S. F. Ry. Co.*, 147 N. Y. Supp. 794. The natural corollary of that proposition is that where the liability of the connecting carrier is that of a warehouseman, the liability of the initial carrier is also that of a warehouseman; and it seems obvious that a decision that the initial carrier is not held to the strict accountability of a carrier after its agent, the final carrier, has become a warehouseman, is by no means equivalent to a holding that its responsibility has entirely ceased.

The correct rule, both on principle and authority, seems to be that under the CARMACK AMENDMENT the delivering carrier is the agent of the initial carrier in all matters relating to the delivery of the goods and their preservation or disposition after arrival at destination (*Burkenroad Goldsmith Co.* v. *Ill. Cent. R. Co.*, 138 La. 81, 70 So. 44); that so long as the relation of carrier and shipper subsists, whether on its own or connecting lines, the liability of the initial carrier is a carrier liability; and that when the final carrier becomes a warehouseman the responsibility of the initial carrier

does not cease, but that its liability thereafter is that of a warehouseman only. And these observations apply as well to interstate shipments made after the CUMMINS AMENDMENT of 1915 (38 Stat. at L. 1196) as before, since the provision of the CARMACK AMENDMENT applicable to this situation is retained verbatim in the later act. W. H. S.

IMPAIRMENT OF THE OBLIGATION OF CONTRACT.—The United States Supreme Court has again indicated its astuteness to hold a decision of a State court to be a "law impairing the obligation of contracts," wherever it can find that the decision was in fact reached by giving effect to some subsequent legislation. Each of two street railway companies in Detroit was granted the privilege of occupying additional streets, by ordinances which contained stipulations binding each company to accept a single fare for transportation "over any of its lines in said city" and also to sell tickets at a certain reduced rate. The plaintiff in error, the Detroit United Railway, acquired and united under one organization the two street railway corporations referred to above and also certain suburban lines operating under village and township grants, contractual in their nature, but which franchises did not require that these suburban lines sell tickets at the same rate as was required by the city of Detroit from those street railways mentioned above, now a part of the Detroit United Railway system. Afterwards, by an act of the legislature, the territory in which these suburban lines were operating was annexed to the City of Detroit, the act providing that the annexed territory should be subject to all the ordinances and regulations of the city, with exceptions not now material. It was the contention of the State and of the City of Detroit that the provisions in the ordinances, which contained stipulations regarding fares, and which were assented to by the predecessors of the Detroit United Railway, were intended to be applicable throughout the city as it might from time to time be enlarged, and that the Detroit United Railway, as successor to these companies, is bound by the limitations of those ordinances as to all its lines within the city, not only as its limits existed at the time of passage of the ordinances, but also as to the lines it owns in the territory which was subsequently annexed to the city. The Supreme Court held that the giving of such effect to the annexation act would amount to an impairment of the obligation of contract. *Detroit United Railway* v. *People of the State of Michigan,* and *Detroit United Railway* v. *City of Detroit,* 37 Sup. Ct. 87.

This decision reversed the Supreme Court of the State of Michigan, as that tribunal had determined the issues favorably to the city and State. *People* v. *Detroit United Railway,* 162 Mich. 460, 139 Am. St. Rep. 582, 125 N. W. 700, 127 N. W. 748; *Detroit United Railway* v. *City of Detroit,* 173 Mich. 314, 139 N. W. 56.

A consideration of these two Michigan cases discloses that the decisions were founded upon a construction of the ordinances requiring the predecessors of the Detroit United Railway to charge a single fare for transportation between any two points on their lines within the city limits. The Michigan court considered that in entering into this contract the parties had borne in